

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 1, 2013

## **SENATE BILL**

**No. 686**

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**Introduced by Senator Jackson**

February 22, 2013

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An act to amend Section 11713.18 of, and to add Sections 11713.27 and 11713.28 to, the Vehicle Code, relating to vehicles.

### **LEGISLATIVE COUNSEL'S DIGEST**

SB 686, as amended, Jackson. Vehicles: vehicle dealers.

Existing law provides that it is a violation of the Vehicle Code for the holder of any dealer's license issued as specified to advertise for sale or sell a used vehicle as "certified" or use any similar descriptive term in the advertisement or the sale of a used vehicle that implies the vehicle has been certified to meet the terms of a used vehicle certification program if any of specified provisions apply, including, but not limited to, the dealer knows or should have known that the vehicle has sustained frame damage, and the dealer disclaims any warranties of merchantability on the vehicle. Under existing law, a violation of these provisions is a crime.

The bill would also prohibit that representation from being made if the dealer knows or should have known that the vehicle is subject to a manufacturer's safety recall, and the repairs required to correct the defect have not been performed on the vehicle. By creating a new crime, the bill would impose a state-mandated local program.

Existing law provides that it is unlawful for a lessor-retailer to sell a vehicle without a vehicle dealer license or temporary permit. Existing law prohibits a licensed dealer from engaging in certain practices, including, among others, making an untrue or misleading statement indicating that a vehicle is equipped with all the factory-installed optional equipment the manufacturer offers. Under existing law, a violation of these provisions is a crime.

This bill would additionally prohibit a dealer from selling, leasing for an initial term of less than 4 months, renting, loaning, or otherwise transferring ownership at retail of a used vehicle, as specified, if the dealer knows or should have known that the vehicle is subject to a manufacturer's safety recall, unless the repairs required to correct the defect have been performed on the vehicle. The bill would additionally prohibit a rental company that is also a dealer from selling or otherwise transferring ownership at retail of a used vehicle, if the rental company knows or should have known that the vehicle is subject to a manufacturer's safety recall, unless the repairs required to correct the defect have been performed on the vehicle. The bill would require a dealer to obtain information about a used vehicle's safety recall status, as specified. By creating a new crime, this bill would impose a state-mandated local program. The bill would also make a violation of these provisions actionable under the Consumers Legal Remedies Act and the Unfair Competition Law, and as false advertising. *Specified prohibitions of this bill would become operative upon the initial effective date of the regulations adopted pursuant to a provision of the federal Moving Ahead for Progress in the 21st Century Act that implement that act. The bill would correct erroneous cross-references.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11713.18 of the Vehicle Code is amended  
2 to read:

1 11713.18. (a) It is a violation of this code for the holder of  
2 any dealer's license issued under this article to advertise for sale  
3 or sell a used vehicle as "certified" or use any similar descriptive  
4 term in the advertisement or the sale of a used vehicle that implies  
5 the vehicle has been certified to meet the terms of a used vehicle  
6 certification program if any of the following apply:

7 (1) The dealer knows or should have known that the odometer  
8 on the vehicle does not indicate actual mileage, has been rolled  
9 back or otherwise altered to show fewer miles, or replaced with  
10 an odometer showing fewer miles than actually driven.

11 (2) The dealer knows or should have known that the vehicle  
12 was reacquired by the vehicle's manufacturer or a dealer pursuant  
13 to state or federal warranty laws.

14 (3) The title to the vehicle has been inscribed with the notation  
15 "Lemon Law Buyback," "manufacturer repurchase," "salvage,"  
16 "junk," "nonrepairable," "flood," or similar title designation  
17 required by this state or another state.

18 (4) The vehicle has sustained damage in an impact, fire, or flood,  
19 that after repair prior to sale substantially impairs the use or safety  
20 of the vehicle.

21 (5) The dealer knows or should have known that the vehicle has  
22 sustained frame damage.

23 (6) Prior to sale, the dealer fails to provide the buyer with a  
24 completed inspection report indicating all the components  
25 inspected.

26 (7) The dealer disclaims any warranties of merchantability on  
27 the vehicle.

28 (8) The vehicle is sold "AS IS."

29 (9) The term "certified" or any similar descriptive term is used  
30 in any manner that is untrue or misleading or that would cause any  
31 advertisement to be in violation of subdivision (a) of Section 11713  
32 of this code or Section 17200 or 17500 of the Business and  
33 Professions Code.

34 (10) The dealer knows or should have known that the vehicle  
35 is subject to a manufacturer's safety recall, and the repairs required  
36 to correct the defect have not been performed on the vehicle. *The*  
37 *prohibition of this paragraph shall become operative on the initial*  
38 *effective date of the regulations adopted pursuant to Section 31301*  
39 *of the federal Moving Ahead for Progress in the 21st Century Act*  
40 *(Public Law 112-141), that implement that act.*

(b) A violation of this section is actionable under the Consumers Legal Remedies Act (Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code), the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code), Section 17500 of the Business and Professions Code, or any other applicable state or federal law. The rights and remedies provided by this section are cumulative and shall not be construed as restricting any right or remedy that is otherwise available.

(c) This section does not abrogate or limit any disclosure obligation imposed by any other law.

(d) This section does not apply to the advertisement or sale of a used motorcycle or a used off-highway motor vehicle subject to identification under Section 38010.

SEC. 2. Section 11713.27 is added to the Vehicle Code, to read:

11713.27. (a) Except for a rental company, as defined in Section 1936 of the Civil Code, a dealer issued a license under this article shall not sell, lease for an initial term of less than four months, rent, loan, or otherwise transfer ownership at retail of a used vehicle, as defined in Section 665 and subject to registration under this code, if the dealer knows or should have known that the vehicle is subject to a manufacturer's safety recall, unless the repairs required to correct the defect have been performed on the vehicle.

(b) For purposes of this section, a dealer is deemed to have knowledge of a manufacturer's safety recall if either of the following applies:

- (1) The dealer receives notification from the manufacturer.
- (2) The dealer is a franchisee of the manufacturer.

(c) In the absence of knowledge pursuant to subdivision (b), and until auto manufacturers are required to provide vehicle safety recall data on a publicly accessible Internet Web site pursuant to Section 31301 of ~~Title 49 of the United States Code~~, *the federal Moving Ahead for Progress in the 21st Century Act (Public Law 112-141)*, a dealer shall obtain information about a vehicle's safety recall status prior to completing a transaction subject to this section from at least one of the following sources of information:

1 (1) The Internet Web site of the manufacturer, provided that the  
2 safety recall status of the vehicle is made available by the  
3 manufacturer.

4 (2) A toll-free telephone number, provided that the manufacturer  
5 has made the safety recall status of the vehicle available at that  
6 number.

7 (3) Another dealer that is a franchisee of the manufacturer.

8 (4) A commonly available vehicle history report, provided that  
9 the safety recall status of the vehicle is available.

10 (d) When auto manufacturers are required to provide vehicle  
11 safety recall data on a publicly accessible Internet Web site  
12 pursuant to Section 31301 of ~~Title 49 of the United States Code,~~  
13 *the federal Moving Ahead for Progress in the 21st Century Act*  
14 *(Public Law 112-141)*, a dealer shall obtain information about a  
15 used vehicle's safety recall status from that database.

16 (e) A violation of this section is actionable under the Consumers  
17 Legal Remedies Act (Title 1.5 (commencing with Section 1750)  
18 of Part 4 of Division 3 of the Civil Code), the Unfair Competition  
19 Law (Chapter 5 (commencing with Section 17200) of Part 2 of  
20 Division 7 of the Business and Professions Code), Section 17500  
21 of the Business and Professions Code, and any other applicable  
22 state or federal law. The rights and remedies provided by this  
23 section are cumulative and shall not be construed as restricting  
24 any right or remedy that is otherwise available.

25 (f) *The prohibition of this section shall become operative on the*  
26 *initial effective date of the regulations adopted pursuant to Section*  
27 *31301 of the federal Moving Ahead for Progress in the 21st*  
28 *Century Act (Public Law 112-141), that implement that act.*

29 SEC. 3. Section 11713.28 is added to the Vehicle Code, to  
30 read:

31 11713.28. (a) A rental company, as defined in Section 1936  
32 of the Civil Code, that is also a dealer licensed under this article  
33 shall not sell or otherwise transfer ownership at retail of a used  
34 vehicle, as defined in Section 665 and subject to registration under  
35 this code, if the rental company knows or should have known that  
36 the vehicle is subject to a manufacturer's safety recall, unless the  
37 repairs required to correct the defect have been performed on the  
38 vehicle.

39 (b) For purposes of this section, a rental company is deemed to  
40 have knowledge of a manufacturer's safety recall when the rental

1 company receives notification of the manufacturer's safety recall  
2 pursuant to subdivision (b) or (c) of Section 30118 or Section  
3 30119 of Title 49 of the United States Code.

4 (c) In the absence of knowledge pursuant to subdivision (b) of  
5 this section, and until auto manufacturers are required to provide  
6 vehicle safety recall data on a publicly accessible Internet Web  
7 site pursuant to Section 31301 of ~~Title 49 of the United States~~  
8 ~~Code~~, *the federal Moving Ahead for Progress in the 21st Century*  
9 *Act (Public Law 112-141)*, a rental company shall obtain  
10 information about a vehicle's safety recall status prior to  
11 completing a transaction subject to this section from at least one  
12 of the following sources of information:

13 (1) The Internet Web site of the manufacturer, provided that the  
14 safety recall status of the vehicle is made available by the  
15 manufacturer.

16 (2) A toll-free telephone number, provided that the manufacturer  
17 has made the safety recall status of the vehicle available at that  
18 number.

19 (3) Another dealer that is a franchisee of the manufacturer.

20 (4) A commonly available vehicle history report, provided that  
21 the safety recall status of the vehicle is available.

22 (d) When auto manufacturers are required to provide vehicle  
23 safety recall data on a publicly accessible Internet Web site  
24 pursuant to Section 33101 of ~~Title 49 of the United States Code~~,  
25 *the federal Moving Ahead for Progress in the 21st Century Act*  
26 *(Public Law 112-141)*, rental car companies shall obtain  
27 information about a used vehicle's safety recall status from that  
28 database.

29 (e) A violation of this section is actionable under the Consumers  
30 Legal Remedies Act (Title 1.5 (commencing with Section 1750)  
31 of Part 4 of Division 3 of the Civil Code), the Unfair Competition  
32 Law (Chapter 5 (commencing with Section 17200) of Part 2 of  
33 Division 7 of the Business and Professions Code), Section 17500  
34 of the Business and Professions Code, and any other applicable  
35 state or federal law. The rights and remedies provided by this  
36 section are cumulative and shall not be construed as restricting  
37 any right or remedy that is otherwise available.

38 (f) *The prohibition of this section shall become operative on the*  
39 *initial effective date of the regulations adopted pursuant to Section*

1 *31301 of the federal Moving Ahead for Progress in the 21st*  
2 *Century Act (Public Law 112-141), that implement that act.*

3 SEC. 4. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.